

Adopted	Rejected
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## COMMITTEE REPORT

YES:	12
NO:	0

### MR. SPEAKER:

*Your Committee on Judiciary, to which was referred Senate Bill 509, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 5-22-1-1 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as
- 5       provided in this chapter, this article applies to every ~~expenditure~~ use of
- 6       public funds by a governmental body.
- 7       SECTION 2. IC 5-22-1-2 IS AMENDED TO READ AS
- 8       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** Except as
- 9       provided **in subsection (b) and otherwise** in this article, this article
- 10      does not apply to the following:
- 11       (1) The commission for higher education.
- 12       (2) A state educational institution. However, IC 5-22-15 applies
- 13       to a state educational institution.
- 14       (3) Military officers and military and armory boards of the state.
- 15       (4) An entity established by the general assembly as a body
- 16       corporate and politic. However, IC 5-22-15 applies to a body

- 1 corporate and politic.
- 2 (5) A local hospital authority under IC 5-1-4.
- 3 (6) A municipally owned utility under IC 8-1-11.1 or IC 8-1.5.
- 4 (7) Hospitals organized or operated under IC 16-22-1 through
- 5 IC 16-22-5, IC 16-23-1, or IC 16-24-1.
- 6 (8) A library board under IC 20-14-3-14(b).
- 7 (9) A local housing authority under IC 36-7-18.
- 8 (10) Tax exempt Indiana nonprofit corporations leasing and
- 9 operating a city market owned by a political subdivision.
- 10 (11) A person paying for a purchase or lease with funds other than
- 11 public funds.
- 12 (12) A person that has entered into an agreement with a
- 13 governmental body under IC 5-23.
- 14 (13) A municipality for the operation of municipal facilities used
- 15 for the collection, treatment, purification, and disposal in a
- 16 sanitary manner of liquid and solid waste, sewage, night soil, and
- 17 industrial waste.

18 **(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to the entities described**  
 19 **in subsection (a).**

20 SECTION 3. IC 5-22-1-3 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as**  
 22 **provided in subsection (b),** this article does not apply to the following  
 23 types of activities:

- 24 (1) A contract between governmental bodies except for a contract
- 25 authorized under this article.
- 26 (2) A public works project.
- 27 (3) A collective bargaining agreement between a governmental
- 28 body and its employees.
- 29 (4) The employment relationship between a governmental body
- 30 and an employee of the governmental body.
- 31 (5) An investment of public funds.
- 32 (6) A contract between a governmental body and a body corporate
- 33 and politic.
- 34 (7) A contract for social services.

35 **(b) IC 5-22-2-13.3 and IC 5-22-3-7 apply to:**

- 36 **(1) a contract;**
- 37 **(2) a project;**
- 38 **(3) an agreement;**

- 1           **(4) an employment relationship; or**  
 2           **(5) an investment;**  
 3           **described in subsection (a).**

4           SECTION 4. IC 5-22-2-1 IS AMENDED TO READ AS  
 5           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as**  
 6           **otherwise provided**, the definitions in this chapter apply throughout  
 7           this article.

8           SECTION 5. IC 5-22-2-13.3 IS ADDED TO THE INDIANA  
 9           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 10          [EFFECTIVE UPON PASSAGE]: Sec. 13.3. **"In good standing"**  
 11          **means that a contractor, or the contractor's principal if the**  
 12          **contractor is not an individual, has certified under penalty for**  
 13          **perjury under IC 35-44-2-1 as a term of its contract with the**  
 14          **governmental body, that:**

15           **(1) the contractor:**

16               **(A) has not violated the terms of:**

- 17                   **(i) IC 24-4.7;**  
 18                   **(ii) IC 24-5-12; or**  
 19                   **(iii) IC 24-5-14;**

20               **in the previous three hundred sixty-five (365) days, even if**  
 21               **IC 24-4.7 is preempted by federal law; and**

22               **(B) will not violate the terms of IC 24-4.7 for the duration**  
 23               **of the contract, even if IC 24-4.7 is preempted by federal**  
 24               **law; and**

25           **(2) an affiliate or principal of the contractor and any person**  
 26           **acting on behalf of the contractor or on behalf of an affiliate**  
 27           **or principal of the contractor:**

28               **(A) has not violated the terms of IC 24-4.7 in the previous**  
 29               **three hundred sixty-five (365) days, even if IC 24-4.7 is**  
 30               **preempted by federal law; and**

31               **(B) will not violate the terms of IC 24-4.7 for the duration**  
 32               **of the contract, even if IC 24-4.7 is preempted by federal**  
 33               **law.**

34          SECTION 6. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE  
 35          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 36          UPON PASSAGE]: Sec. 7. **(a) This section does not apply to a**  
 37          **contract in which one (1) party is a political subdivision.**

38          **(b) A prospective contractor may not contract with a**

1       governmental body unless the prospective contractor is in good  
2       standing.

3       (c) The attorney general may bring an action in the circuit or  
4       superior court of Marion County to:

5               (1) void a contract under this section; and

6               (2) obtain other proper relief.

7       (d) A contract between a contractor and a governmental body  
8       is voidable at the election of the attorney general if the attorney  
9       general establishes in a civil action that:

10              (1) the certification concerning compliance with IC 24-4.7,  
11              IC 24-5-12, or IC 24-5-14 is materially false; or

12              (2) the contractor, an affiliate or a principal of the contractor,  
13              or a person acting on behalf of the contractor or an affiliate or  
14              a principal of the contractor has violated the terms of  
15              IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is  
16              preempted by federal law.

17       (e) If the attorney general establishes in a civil action that a  
18       contractor is knowingly, intentionally, or recklessly liable under  
19       subsection (d), the contractor is prohibited from entering into a  
20       contract with a governmental body for three hundred sixty-five  
21       (365) days after the date on which the contractor exhausts appellate  
22       remedies.

23       (f) In addition to any remedy obtained in a civil action brought  
24       under this section, the attorney general may obtain the following:

25              (1) All money the contractor obtained through each telephone  
26              call made in violation of the terms of IC 24-4.7, IC 24-5-12, or  
27              IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

28              (2) The attorney general's reasonable expenses incurred in:

29                      (A) investigation; and

30                      (B) maintaining the civil action.

31              (3) Reasonable costs and attorney's fees.

32       SECTION 7. IC 24-4.7-5-1 IS AMENDED TO READ AS  
33       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor  
34       who fails to comply with any provision of IC 24-4.7-4 commits a  
35       deceptive act that is actionable by the attorney general under this  
36       chapter. **In addition, a contractor who contracts or seeks to contract**  
37       **with the state:**

38              (1) may be prohibited from contracting with the state; or

**(2) may have an existing contract with the state voided; if the contractor, an affiliate or principal of the contractor, or any person acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law."**

Page 4, line 19, after "." insert **"This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14."**

Page 6, after line 14, begin a new paragraph and insert:

"SECTION 10. IC 24-5-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails to comply with any provision of:

**(1) this chapter; or**

**(2) IC 24-4.7;**

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. **An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for a violation of this chapter **or IC 24-4.7** may be brought in the circuit or superior court of Marion County.

SECTION 11. IC 32-27-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. As used in this chapter, "warranty date" means the date of the first occupancy of the new home as a residence by ~~the initial home buyer~~: **one (1) of the following:**

**(1) The builder.**

**(2) An individual or individuals renting the home from the builder.**

**(3) An individual or individuals living in the home at the request of the builder.**

**(4) The initial home buyer.**

SECTION 12. IC 32-27-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) In selling a completed new home, and in contracting to sell a new home to be completed, the builder may warrant to the initial home buyer the following:

(1) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials.

(2) During the two (2) year period beginning on the warranty date, the new home will be free from defects caused by faulty installation of:

- (A) plumbing;
- (B) electrical;
- (C) heating;
- (D) cooling; or
- (E) ventilating;

systems, exclusive of fixtures, appliances, or items of equipment.

(3) During the four (4) year period beginning on the warranty date, the new home will be free from defects caused by faulty workmanship or defective materials in the roof or roof systems of the new home.

(4) During the ten (10) year period beginning on the warranty date, the new home will be free from major structural defects.

(b) The warranties provided in this section (or IC 34-4-20.5-8 or IC 32-15-7 before their repeal) survive the passing of legal or equitable title in the new home to a home buyer.

**(c) An individual identified in section 7(1), 7(2), or 7(3) of this chapter who is selling a new home shall notify the purchaser of the home in writing on or before the date of closing or transfer of the new home of:**

- (1) the warranty date (as defined in section 7 of this chapter);**
- and**
- (2) the amount of time remaining under the warranty.**

**SECTION 13. [EFFECTIVE UPON PASSAGE] IC 5-22-1-2, IC 5-22-1-3, IC 5-22-2-1, IC 24-4.7-5-1, and IC 24-5-12-23, all as amended by this act, and IC 5-22-2-13.3 and IC 5-22-3-7, both as added by this act, apply only to a contract entered into or renewed**

- 1       **after the effective date of this act.**
- 2       SECTION 14. **An emergency is declared for this act."**
- 3       Renumber all SECTIONS consecutively.  
      (Reference is to SB 509 as reprinted March 1, 2005.)

**and when so amended that said bill do pass.**

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Representative Foley